



TRUSTEES FOR ALASKA

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December 16, 2020
SENT VIA E-MAIL & FOIA ONLINE

FOIA & Records
U.S. Fish and Wildlife Service
1011 E Tudor Rd, MS: 245
Anchorage, AK 99503
fw7_foia@fws.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Trustees for Alaska requests copies of the following documents cited and/or incorporated by reference in the Proposed Incidental Harassment Authorization (IHA) for Polar Bears in the Arctic National Wildlife Refuge, Alaska 85 Fed. Reg. 79,082 (Dec. 8, 2020):

- Analysis of 56 Case Studies of Polar Bear Responses to Human Activity.

For this request, the term “records” should be given the broadest possible interpretation and refers to, but is not limited to, any and all documents, correspondence (whether internal to the federal government or with outside parties), emails, letters, notes (including “cuff notes”), calendar entries, recordings, telephone notes and logs, text messages, chat messages (including through Bison Connect), minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, published or unpublished reports and studies, photographs and other images, and mapping data.

If possible we would prefer to receive the records in an electronic format. Pursuant to 5 U.S.C. § 552(a)(7)(A)–(B), we ask that you provide us with a tracking number for this request within 10 days. We also ask that you provide an estimated date by which the agency will complete action on the request.

Time is of the essence because the requesters plan to immediately use the requested information to engage and inform the public regarding plans to conduct seismic exploration on the Coastal Plain of the Arctic National Wildlife Refuge. The applicant proposes to begin activities under the draft IHA on January 21, 2021 and the draft IHA is currently open for a 30-day public comment period, ending January 7.¹ The

¹ 85 Fed. Reg. 79,082.

information requested is critical to inform public comments on the draft IHA; however, it has not been made publicly available despite its incorporation by reference in this document and despite public requests that the Service release the information.

Fee Waiver Request

We request a waiver of any fees associated with this FOIA request. Under FOIA, fee waivers are decided on a case-by-case basis and “[d]ocuments shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Pursuant to the Department of the Interior’s FOIA regulations, fee waivers are considered on a case-by-case basis and permitted when the disclosure “is in the public interest because its release is likely to contribute significantly to public understanding of the operations or activities of the government,” and the information “is not primarily in the commercial interest of the requester.” 43 C.F.R. §§ 2.45(a)(1)–(2).

The factors used to determine whether the information is likely to contribute to public understanding of the operations or activities are the following: (1) whether the records concern government operations or activities; (2) how disclosure is likely to contribute to public understanding of the government operations and activities; (3) how disclosure will contribute significantly to the understanding of a reasonably broad public audience; and (4) how disclosure will enhance public understanding of the subject to a significant extent. 43 C.F.R. §§ 2.48(a)(1)–(4). As discussed below, disclosure of the requested DOI records is in the public interest and this fee waiver request meets the above criteria. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

1. The records concern government operations or activities.

The FOIA request seeks information related to the federal management of the Coastal Plain of the Arctic Refuge and compliance with the Marine Mammal Protection Act (MMPA). The Service’s draft IHA describes anticipated actions seismic exploration and FWS’s assessment of impacts to MMPA-protected polar bears. The Service’s consultation and analysis to achieve compliance with the MMPA is performing a government function. Thus, this request concerns a government operations, and this factor is satisfied.

2. Disclosure is likely to contribute to public understanding of the government’s operations and activities.

The records sought will provide meaningfully informative content. 43 C.F.R. § 2.48(a)(2)(i). The Service is charged with administering the MMPA for marine mammals under its jurisdiction, including the polar bear. Groups seek documents used or intended to obtain compliance with the MMPA. The information requested is not currently available despite it being expressly incorporated by reference in a public document, and important for the public to understand how the Service has complied

with MMPA requirements for proposed exploration activities in the Arctic Refuge. A logical connection exists between the Service's agency function in administering the MMPA and the records. 43 C.F.R. § 2.48(a)(2)(ii).

The disclosure will not just enhance our understanding, but contribute to a reasonably broad audience's understanding of the subject. 43 C.F.R. § 2.48(a)(2)(iii). As attorneys for environmental non-profit public interest groups, we seek this disclosure with the intent to better understand the Service's processes in Alaska and to share the information with the public. We are qualified, capable, and possess the expertise and intent to disseminate the information to a reasonably broad audience. 43 C.F.R. §§ 2.48(a)(2)(iv)–(a)(2)(v). We have requested new information that has not yet been made publically available, and thus will increase the level of public understanding. We plan to disseminate this new information to the public through our respective media outlets. The information will be shared through various means, including newsletters, reports, articles, electronic action alerts, telephone calls, in-person meetings, and other formal and informal print, digital, and oral communications. We will distribute the information to a broad audience, including local and national conservation groups, local and national policy organizations, community and citizen groups, coalitions, individual citizens, and Alaska Native villages. Therefore, the disclosure will contribute significantly to public understanding of government operations and this factor is satisfied.

3. Disclosure will contribute significantly to the public's understanding.

The information requested is new and not already available to the public. 43 C.F.R. §§ 2.48(a)(3)(i), (a)(3)(iv). The information requested will also confirm or clarify data already released to the public. 43 C.F.R. § 2.48(a)(3)(ii). Groups received the draft IHA for the proposed seismic exploration program, but do not possess the underlying data and information that formed the basis for the Service's assumptions in the draft IHA. Therefore, the information requested is unknown at this time.

The information requested will increase public understanding of department operations or activities. *Id.* How the Service complies with MMPA requirements, and the information relied upon by the agency in making its determinations under this statute, will contribute significantly to the public's understanding. Thus, disclosure will contribute significantly to the understanding of a reasonably broad public audience, and this factor is satisfied.

4. Disclosure will enhance public understanding of the subject to a significant extent.

Disclosure will significantly enhance public understanding of the Service's management and conservation activities related to polar bears on the Coastal Plain. 43 C.F.R. § 2.48(a)(4). The public has significant interest in the management and preservation of threatened polar bears. The information will provide relevant substantive information, including technical information pertaining to leasing and

exploration on the Coastal Plain, mitigation measures, and other information considered by the Service in making its determinations under the MMPA. As described above, Groups will disseminate the requested information to the public through a variety of communication methods. Dissemination of the requested information will significantly increase public understanding about the Service's management activities on the Coastal Plain. Therefore, disclosure will significantly contribute to public understanding of the subject and this factor is satisfied.

5. Groups have no commercial interest in the disclosure of the information.

Disclosure of the requested records is not in our commercial interest. 43 C.F.R. §§ 2.45(a)(2), 2.48(b). Groups have no primary or secondary commercial interest in the dissemination of the requested information. Groups are nonprofit, public interest organizations that educate the public and work in partnership with diverse individuals and groups interested in Alaska's environmental policy issues. As described above, the requested information will be disseminated to educate the public and to further the public interest, and will not be used for commercial purposes. Thus, Groups have no commercial interest that would be furthered by disclosure and this factor is satisfied.

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Based on the foregoing discussion, this fee waiver request meets the FOIA regulation requirements and a fee waiver should be granted. However, if the Service determines that the fee waiver should not be granted, we request that you contact us prior to incurring any fees to produce the FOIA request.

We also request that the Service respond to this request within twenty (20) working days, as required by law. If the agency chooses to withhold any documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any portions of the documents which may be segregated and for which a specific exemption is not claimed.

If you have any questions regarding the scope of this request, please do not hesitate to contact me at (907) 433-2011 or by e-mail at bpsarianos@trustees.org.

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Thank you for your prompt attention to this request.

Sincerely,

s/ Bridget Psarianos
Staff Attorney
Trustees for Alaska

cc:
Lisa Krabbe, U.S. Fish & Wildlife Service
Charles Hamilton, U.S. Fish & Wildlife Service